

AMENDED IN SENATE JULY 6, 2000  
AMENDED IN ASSEMBLY MAY 26, 2000  
AMENDED IN ASSEMBLY APRIL 5, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2222**

**Introduced by Assembly Member Kuehl**

February 24, 2000

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An act to amend Sections 51, 51.5, and 54 of the Civil Code, and to amend Sections 12926, 12940, 12955.3, and 19231 of, *and to add Section 12933.5 to*, the Government Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2222, as amended, Kuehl. Civil rights: disability.

Under the California Fair Employment and Housing Act it is an unlawful employment practice for an employer or employment agency to refuse to hire or employ a person or otherwise discriminate because of specified personal characteristics, including a mental or physical disability *or medical condition*. The act defines mental disability for its purposes to include any mental or psychological disorder, as specified, and defines physical disability to include, among other things, any physiological disease, disorder, condition, disfigurement, or loss that affects specified body systems and limits an individual's ability to participate in major life activities. The act defines "medical condition" to include any

health impairment related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured.

~~This bill would revise these definitions of mental and physical disability to include a record or history of disability, provide that “limits” shall be determined without regard to mitigating measures, and provide that “major life activities” shall be broadly construed, as specified and medical condition. The bill would apply these revised definitions to provisions prohibiting discrimination on the basis of discrimination in public accommodations, business transactions, access to public places, and employment in the state civil service system. The bill would also revise the definition of medical condition to additionally include any health impairment associated with a diagnosis of cancer or a record or history of cancer and would limit the definition to the conditions specified.~~

This bill would also make it an unlawful employment practice, with specified exceptions, for an employer or employment agency to make any medical, psychological, or disability-related inquiry of any job applicant or, with regard to an employee, to make such an inquiry unless it is job-related and consistent with business necessity. The bill would also make it an unlawful employment practice for an employer or other entity covered by the act to fail to engage in a timely, good faith, interactive process to determine effective reasonable accommodations, if any, at the request of an employee or applicant with a known disability.

*Existing law requires state agencies to implement affirmative action employment programs for persons with disabilities and, with certain exceptions, declares it to be the policy of the state to make reasonable accommodation, as defined, to the known physical and mental limitations of an otherwise qualified applicant or employee who is an individual with a disability.*

*This bill would delete the definition of “reasonable accommodation” set forth in these provisions.*

The bill would also make legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known and may be cited as the Prudence Kay Poppink Act.

~~SEC. 1.5. The Legislature finds and declares that California law in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (P.L. 101-336; the “ADA”). Although the ADA provides a floor of protection, California law has always, even prior to passage of the ADA, afforded additional protections.~~

~~California law contains broad definitions of medical condition, physical disability, and mental disability. Physical disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis, and heart disease. Mental disabilities include the full range of mental impairments. In addition, the definition of “physical disability” under California law requires a “limitation” upon major life activities, but does not require, as does the ADA, a “substantial limitation.” Further, under state law, whether a condition limits a major life activity must be determined without respect to any mitigating measures, unless the mitigating measure itself limits major life activities, regardless of federal law under the ADA.~~

~~The Legislature declares that the amendments made by this act to subdivisions (h), (i), and (k) of Section 12926 of the Government Code and Sections 51, 51.5, and 54 of the Civil Code are declaratory of existing state law.~~

~~The Legislature affirms the importance of the “interactive process” between the applicant or employee and the employer in determining reasonable accommodation, as this requirement has been articulated by the Equal Employment Opportunity Commission in its interpretive guidance of the ADA.~~

SEC. 2. Section 51 of the Civil Code is amended to read:

51. (a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

1 (b) All persons within the jurisdiction of this state are  
2 free and equal, and no matter what their sex, race, color,  
3 religion, ancestry, national origin, ~~or disability~~ *disability*,  
4 *or medical condition* are entitled to the full and equal  
5 accommodations, advantages, facilities, privileges, or  
6 services in all business establishments of every kind  
7 whatsoever.

8 (c) This section shall not be construed to confer any  
9 right or privilege on a person that is conditioned or  
10 limited by law or that is applicable alike to persons of  
11 every sex, color, race, religion, ancestry, national origin,  
12 ~~or disability~~ *disability, or medical condition*.

13 (d) Nothing in this section shall be construed to  
14 require any construction, alteration, repair, structural or  
15 otherwise, or modification of any sort whatsoever,  
16 beyond that construction, alteration, repair, or  
17 modification that is otherwise required by other  
18 provisions of law, to any new or existing establishment,  
19 facility, building, improvement, or any other structure,  
20 nor shall anything in this section be construed to  
21 augment, restrict, or alter in any way the authority of the  
22 State Architect to require construction, alteration, repair,  
23 or modifications that the State Architect otherwise  
24 possesses pursuant to other laws.

25 ~~(e) For purposes of this section, "disability" includes~~

26 *(e) For purposes of this section:*

27 (1) "*Disability*" means any mental or physical  
28 disability as defined in Section 12926 of the Government  
29 Code.

30 (2) "*Medical condition*" has the same meaning as  
31 defined in subdivision (h) of Section 12926 of the  
32 Government Code.

33 (f) A violation of the right of any individual under the  
34 Americans with Disabilities Act of 1990 (Public Law  
35 101-336) shall also constitute a violation of this section.

36 SEC. 3. Section 51.5 of the Civil Code is amended to  
37 read:

38 51.5. (a) No business establishment of any kind  
39 whatsoever shall discriminate against, boycott or  
40 blacklist, or refuse to buy from, contract with, sell to, or

1 trade with any person in this state because of the race,  
2 creed, religion, color, national origin, sex, ~~or disability~~  
3 *disability, or medical condition* of the person or of the  
4 person's partners, members, stockholders, directors,  
5 officers, managers, superintendents, agents, employees,  
6 business associates, suppliers, or customers, because the  
7 person is perceived to have one or more of those  
8 characteristics, or because the person is associated with a  
9 person who has, or is perceived to have, any of those  
10 characteristics.

11 (b) As used in this section, "person" includes any  
12 person, firm, association, organization, partnership,  
13 business trust, corporation, limited liability company, or  
14 company.

15 (c) This section shall not be construed to require any  
16 construction, alteration, repair, structural or otherwise,  
17 or modification of any sort whatsoever, beyond that  
18 construction, alteration, repair, or modification that is  
19 otherwise required by other provisions of law, to any new  
20 or existing establishment, facility, building,  
21 improvement, or any other structure, nor shall this  
22 section be construed to augment, restrict, or alter in any  
23 way the authority of the State Architect to require  
24 construction, alteration, repair, or modifications that the  
25 State Architect otherwise possesses pursuant to other  
26 laws.

27 ~~(d) For purposes of this section, "disability" includes~~

28 *(d) For purposes of this section:*

29 (1) "*Disability*" means any mental or physical  
30 disability as defined in Section 12926 of the Government  
31 Code.

32 (2) "*Medical condition*" has the same meaning as  
33 defined in subdivision (h) of Section 12926 of the  
34 Government Code.

35 SEC. 4. Section 54 of the Civil Code is amended to  
36 read:

37 54. (a) Individuals with disabilities *or medical*  
38 *conditions* have the same right as the general public to  
39 the full and free use of the streets, highways, sidewalks,  
40 walkways, public buildings, medical facilities, including

1 hospitals, clinics, and physicians' offices, public facilities,  
2 and other public places.

3 ~~(b) "Disability," as used in this part, means any mental~~

4 *(b) For purposes of this section:*

5 *(1) "Disability" means any mental or physical*  
6 *disability as defined in Section 12926 of the Government*  
7 *Code.*

8 *(2) "Medical condition" has the same meaning as*  
9 *defined in subdivision (h) of Section 12926 of the*  
10 *Government Code.*

11 (c) A violation of the right of an individual under the  
12 Americans with Disabilities Act of 1990 (Public Law  
13 101-336) also constitutes a violation of this section.

14 SEC. 5. Section 12926 of the Government Code is  
15 amended to read:

16 12926. As used in this part in connection with  
17 unlawful practices, unless a different meaning clearly  
18 appears from the context:

19 (a) "Affirmative relief" or "prospective relief"  
20 includes the authority to order reinstatement of an  
21 employee, awards of backpay, reimbursement of  
22 out-of-pocket expenses, hiring, transfers, reassignments,  
23 grants of tenure, promotions, cease and desist orders,  
24 posting of notices, training of personnel, testing,  
25 expunging of records, reporting of records, and any other  
26 similar relief that is intended to correct unlawful  
27 practices under this part.

28 (b) "Age" refers to the chronological age of any  
29 individual who has reached his or her 40th birthday.

30 (c) "Employee" does not include any individual  
31 employed by his or her parents, spouse, or child, or any  
32 individual employed under a special license in a nonprofit  
33 sheltered workshop or rehabilitation facility.

34 (d) "Employer" includes any person regularly  
35 employing five or more persons, or any person acting as  
36 an agent of an employer, directly or indirectly, the state  
37 or any political or civil subdivision of the state, and cities,  
38 except as follows:

39 "Employer" does not include a religious association or  
40 corporation not organized for private profit.

(e) “Employment agency” includes any person undertaking for compensation to procure employees or opportunities to work.

(f) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. “Essential functions” does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer’s judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) “Labor organization” includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) “Medical condition” means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, “genetic characteristics” means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) ~~“Mental disability” includes any mental or psychological disorder, or a record or history of that disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. However, “mental disability” does not include conditions excluded from the federal definition of “disability” pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a mental disability, but is not limited to, all of the following:~~

*(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:*

*(A) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive*



1 *devices, or reasonable accommodations, unless the*  
2 *mitigating measure itself limits a major life activity.*

3 *(B) A mental or psychological disorder or condition*  
4 *limits a major life activity if it makes the achievement of*  
5 *the major life activity difficult.*

6 *(C) “Major life activities” shall be broadly construed*  
7 *to include physical, mental, and social activities and*  
8 *working.*

9 *(2) Any other mental or psychological disorder or*  
10 *condition not described in paragraph (1) that requires*  
11 *special education or related services.*

12 *(3) Having a record or history of a mental or*  
13 *psychological disorder or condition described in*  
14 *paragraph (1) or (2), which is known to the employer or*  
15 *other entity covered by this part.*

16 *(4) Being regarded or treated by the employer or*  
17 *other entity covered by this part as having, or having had,*  
18 *any mental condition that makes achievement of a major*  
19 *life activity difficult.*

20 *(5) Being regarded or treated by the employer or*  
21 *other entity covered by this part as having, or having had,*  
22 *a mental or psychological disorder or condition that has*  
23 *no present disabling effect, but that may become a*  
24 *mental disability as described in paragraph (1) or (2).*

25 *“Mental disability” does not include conditions*  
26 *excluded from the federal definition of “disability”*  
27 *pursuant to Section 511 of the Americans with Disabilities*  
28 *Act of 1990 (42 U.S.C. Sec. 12211). A current unlawful use*  
29 *of controlled substances or other drugs shall not be*  
30 *deemed, in and of itself, to constitute a mental disability.*

31 *(j) “On the bases enumerated in this part” means or*  
32 *refers to discrimination on the basis of one or more of the*  
33 *following: race, religious creed, color, national origin,*  
34 *ancestry, physical disability, mental disability, medical*  
35 *condition, marital status, sex, age, or sexual orientation.*

36 *(k) “Physical disability” includes, but is not limited to,*  
37 *all of the following:*

38 *(1) Having any physiological disease, disorder,*  
39 *condition, cosmetic disfigurement, or anatomical loss that*  
40 *does both of the following:*

1 (A) Affects one or more of the following body systems:  
2 neurological, immunological, musculoskeletal, special  
3 sense organs, respiratory, including speech organs,  
4 cardiovascular, reproductive, digestive, genitourinary,  
5 hemic and lymphatic, skin, and endocrine.

6 ~~(B) Limits an individual's ability to participate in~~  
7 ~~major life activities.~~

8 *(B) Limits a major life activity. For purposes of this*  
9 *section:*

10 (i) ~~For purposes of this section, "limits"~~ *"Limits"* shall  
11 be determined without regard to mitigating measures  
12 such as medications, assistive devices, prosthetics, or  
13 reasonable accommodations, unless the mitigating  
14 measure itself limits ~~the individual's ability to participate~~  
15 ~~in major life activities.~~ *a major life activity.*

16 (ii) ~~For purposes of this section, "major~~ A  
17 *psychological disease, disorder, condition, cosmetic*  
18 *disfigurement, or anatomical loss limits a major life*  
19 *activity if it makes the achievement of the major life*  
20 *activity difficult.*

21 (iii) *"Major life activities"* shall be broadly construed  
22 and includes physical, mental, ~~social, and~~  
23 ~~employment-related activities.~~ *and social activities and*  
24 *working.*

25 (2) Any other health impairment not described in  
26 paragraph (1) that requires special education or related  
27 services.

28 (3) Having a record or history of or being regarded as  
29 having or having had a disease, disorder, condition,  
30 cosmetic disfigurement, anatomical loss, or health  
31 impairment described in paragraph (1) or (2), *which is*  
32 *known to the employer or other entity covered by this*  
33 *part.*

34 (4) *Being regarded or treated by the employer or*  
35 *other entity covered by this part as having, or having had,*  
36 *any physical condition that makes achievement of a major*  
37 *life activity difficult.*

38 (5) *Being regarded or treated by the employer or*  
39 *other entity covered by this part as having, or having had,*  
40 *a disease, disorder, condition, cosmetic disfigurement,*

1 anatomical loss, or health impairment that has no present  
2 disabling effect but may become a physical disability as  
3 described in paragraph (1) or (2).

4 ~~It is the intent of the Legislature that the definition of~~  
5 ~~“physical disability” in this subdivision shall have the~~  
6 ~~same meaning as the term “physical handicap” formerly~~  
7 ~~defined by this subdivision and construed in American~~  
8 ~~National Ins. Co. v. Fair Employment & Housing Com.~~  
9 ~~(1982) 32 Cal. 3d 603. However, “physical disability” does~~  
10 ~~not include conditions excluded from the federal~~  
11 ~~definition of “disability” pursuant to Section 511 of the~~  
12 ~~Americans with Disabilities Act of 1990 (42 U.S.C. Sec.~~  
13 ~~12211). Additionally, for purposes of this part, the~~

14 *(6) “Physical disability” does not include conditions*  
15 *excluded from the definition of physical disability by*  
16 *Section 511 of the Americans with Disabilities Act of 1990*  
17 *(42 U.S.C. Sec. 12211). Current unlawful use of controlled*  
18 *substances or other drugs shall not be deemed, in and of*  
19 *itself, to constitute a physical disability.*

20 *(l) Notwithstanding subdivisions (i) and (k), if the*  
21 *definition of “disability” used in the Americans with*  
22 *Disabilities Act of 1990 (Public Law 101-336) would result*  
23 *in broader protection of the civil rights of individuals with*  
24 *a mental disability or physical disability, as defined in*  
25 *subdivision (i) or (k), or would include any medical*  
26 *condition not included within those definitions, then that*  
27 *broader protection or coverage shall be deemed*  
28 *incorporated by reference into, and shall prevail over*  
29 *conflicting provisions of, the definitions in subdivisions*  
30 *(i) and (k).*

31 *(m) “Race, religious creed, color, national origin,*  
32 *ancestry, physical disability, mental disability, medical*  
33 *condition, marital status, sex, age, or sexual orientation”*  
34 *includes a perception that the person has any of those*  
35 *characteristics or that the person is associated with a*  
36 *person who has, or is perceived to have, any of those*  
37 *characteristics.*

38 *(n) “Reasonable accommodation” may include either*  
39 *of the following:*

1 (1) Making existing facilities used by employees  
2 readily accessible to, and usable by, individuals with  
3 disabilities.

4 (2) Job restructuring, part-time or modified work  
5 schedules, reassignment to a vacant position, acquisition  
6 or modification of equipment or devices, adjustment or  
7 modifications of examinations, training materials or  
8 policies, the provision of qualified readers or interpreters,  
9 and other similar accommodations for individuals with  
10 disabilities.

11 (o) “Religious creed,” “religion,” “religious  
12 observance,” “religious belief,” and “creed” include all  
13 aspects of religious belief, observance, and practice.

14 (p) “Sex” includes, but is not limited to, pregnancy,  
15 childbirth, or medical conditions related to pregnancy or  
16 childbirth.

17 (q) “Sexual orientation” means heterosexuality,  
18 homosexuality, and bisexuality.

19 (r) “Supervisor” means any individual having the  
20 authority, in the interest of the employer, to hire,  
21 transfer, suspend, lay off, recall, promote, discharge,  
22 assign, reward, or discipline other employees, or the  
23 responsibility to direct them, or to adjust their grievances,  
24 or effectively to recommend that action, if, in connection  
25 with the foregoing, the exercise of that authority is not of  
26 a merely routine or clerical nature, but requires the use  
27 of independent judgment.

28 (s) “Undue hardship” means an action requiring  
29 significant difficulty or expense, when considered in light  
30 of the following factors: (1) the nature and cost of the  
31 accommodation needed, (2) the overall financial  
32 resources of the facilities involved in the provision of the  
33 reasonable accommodations, the number of persons  
34 employed at the facility, and the effect on expenses and  
35 resources or the impact otherwise of these  
36 accommodations upon the operation of the facility, (3)  
37 the overall financial resources of the covered entity, the  
38 overall size of the business of a covered entity with  
39 respect to the number of employees, and the number,  
40 type, and location of its facilities, (4) the type of

operations, including the composition, structure, and functions of the workforce of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 5.5. Section 12933.5 is added to the Government Code, to read:

12933.5. The Legislature finds and declares as follows:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity is required to be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, "working" is a major life

1 activity, regardless of whether the actual or perceived  
2 working limitation implicates a particular employment or  
3 a class or broad range of employments.

4 (d) Notwithstanding any interpretation of law in  
5 *Cassista v. Community Foods* (1993) 5 Cal.4th 1050, the  
6 Legislature intends (1) for state law to be independent of  
7 the Americans with Disabilities Act of 1990, (2) to require  
8 a “limitation” rather than a “substantial limitation” of a  
9 major life activity, and (3) by enacting paragraph (4) of  
10 subdivision (i) and paragraph (4) of subdivision (k) of  
11 Section 12926, to provide protection when an individual  
12 is erroneously or mistakenly believed to have any physical  
13 or mental condition that limits a major life activity.

14 (e) The Legislature affirms the importance of the  
15 interactive process between the applicant or employee  
16 and the employer in determining a reasonable  
17 accommodation, as this requirement has been articulated  
18 by the Equal Employment Opportunity Commission in  
19 its interpretive guidance of the Americans with  
20 Disabilities Act of 1990.

21 SEC. 6. Section 12940 of the Government Code is  
22 amended to read:

23 12940. It shall be an unlawful employment practice,  
24 unless based upon a bona fide occupational qualification,  
25 or, except where based upon applicable security  
26 regulations established by the United States or the State  
27 of California:

28 (a) For an employer, because of the race, religious  
29 creed, color, national origin, ancestry, physical disability,  
30 mental disability, medical condition, marital status, sex, or  
31 sexual orientation of any person, to refuse to hire or  
32 employ the person or to refuse to select the person for a  
33 training program leading to employment, or to bar or to  
34 discharge the person from employment or from a training  
35 program leading to employment, or to discriminate  
36 against the person in compensation or in terms,  
37 conditions, or privileges of employment.

38 (1) This part does not prohibit an employer from  
39 refusing to hire or discharging an employee with a  
40 physical or mental disability, or subject an employer to

1 any legal liability resulting from the refusal to employ or  
2 the discharge of an employee with a physical or mental  
3 disability, where the employee, because of his or her  
4 physical or mental disability, is unable to perform his or  
5 her essential duties even with reasonable  
6 accommodations, or cannot perform those duties in a  
7 manner that would not endanger his or her health or  
8 safety or the health or safety of others even with  
9 reasonable accommodations.

10 (2) This part does not prohibit an employer from  
11 refusing to hire or discharging an employee who, because  
12 of the employee's medical condition, is unable to perform  
13 his or her essential duties even with reasonable  
14 accommodations, or cannot perform those duties in a  
15 manner that would not endanger the employee's health  
16 or safety or the health or safety of others even with  
17 reasonable accommodations. Nothing in this part shall  
18 subject an employer to any legal liability resulting from  
19 the refusal to employ or the discharge of an employee  
20 who, because of the employee's medical condition, is  
21 unable to perform his or her essential duties, or cannot  
22 perform those duties in a manner that would not  
23 endanger the employee's health or safety or the health or  
24 safety of others even with reasonable accommodations.

25 (3) Nothing in this part relating to discrimination on  
26 account of marital status shall do either of the following:

27 (A) Affect the right of an employer to reasonably  
28 regulate, for reasons of supervision, safety, security, or  
29 morale, the working of spouses in the same department,  
30 division, or facility, consistent with the rules and  
31 regulations adopted by the commission.

32 (B) Prohibit bona fide health plans from providing  
33 additional or greater benefits to employees with  
34 dependents than to those employees without or with  
35 fewer dependents.

36 (4) Nothing in this part relating to discrimination on  
37 account of sex shall affect the right of an employer to use  
38 veteran status as a factor in employee selection or to give  
39 special consideration to Vietnam era veterans.



1 (b) For a labor organization, because of the race,  
2 religious creed, color, national origin, ancestry, physical  
3 disability, mental disability, medical condition, marital  
4 status, sex, or sexual orientation of any person, to exclude,  
5 expel or restrict from its membership the person, or to  
6 provide only second-class or segregated membership or  
7 to discriminate against any person because of the race,  
8 religious creed, color, national origin, ancestry, physical  
9 disability, mental disability, medical condition, marital  
10 status, sex, or sexual orientation of the person in the  
11 election of officers of the labor organization or in the  
12 selection of the labor organization's staff or to  
13 discriminate in any way against any of its members or  
14 against any employer or against any person employed by  
15 an employer.

16 (c) For any person to discriminate against any person  
17 in the selection or training of that person in any  
18 apprenticeship training program or any other training  
19 program leading to employment because of the race,  
20 religious creed, color, national origin, ancestry, physical  
21 disability, mental disability, medical condition, marital  
22 status, sex, or sexual orientation of the person  
23 discriminated against.

24 (d) For any employer or employment agency to print  
25 or circulate or cause to be printed or circulated any  
26 publication, or to make any non-job-related inquiry of an  
27 employee or applicant, either verbal or through use of an  
28 application form, that expresses, directly or indirectly,  
29 any limitation, specification, or discrimination as to race,  
30 religious creed, color, national origin, ancestry, physical  
31 disability, mental disability, medical condition, marital  
32 status, sex, or sexual orientation, or any intent to make any  
33 such limitation, specification or discrimination.

34 (e) (1) Except as provided in paragraph (2) or (3),  
35 for any employer or employment agency to require any  
36 medical or psychological examination of an applicant, to  
37 make any medical or psychological inquiry of an  
38 applicant, to make any inquiry whether an applicant has  
39 a mental disability or physical disability or medical  
40 condition, or to make any inquiry regarding the nature or





1 severity of a physical disability, mental disability, or  
2 medical condition.

3 (2) Notwithstanding paragraph (1), an employer or  
4 employment agency may inquire into the ability of an  
5 applicant to perform job-related functions and may  
6 respond to an applicant's request for reasonable  
7 accommodation.

8 (3) Notwithstanding paragraph (1), an employer or  
9 employment agency may require a medical or  
10 psychological examination or make a medical or  
11 psychological inquiry of a job applicant after an  
12 employment offer has been made but prior to the  
13 commencement of employment duties, provided that the  
14 examination or inquiry is job-related and consistent with  
15 business necessity and that all entering employees in the  
16 same job classification are subject to the same  
17 examination or inquiry.

18 (f) (1) Except as provided in paragraph (2), for any  
19 employer or employment agency to require any medical  
20 or psychological examination of an employee, to make  
21 any medical or psychological inquiry of an employee, to  
22 make any inquiry whether an employee has a mental  
23 disability, physical disability, or medical condition, or to  
24 make any inquiry regarding the nature or severity of a  
25 physical disability, mental disability, or medical  
26 condition.

27 (2) Notwithstanding paragraph (1), an employer or  
28 employment agency may require any examinations or  
29 inquiries that it can show to be job-related and consistent  
30 with business necessity. An employer or employment  
31 agency may conduct voluntary medical examinations,  
32 including voluntary medical histories, which are part of  
33 an employee health program available to employees at  
34 that worksite.

35 (g) For any employer, labor organization, or  
36 employment agency to harass, discharge, expel, or  
37 otherwise discriminate against any person because the  
38 person has made a report pursuant to Section 11161.8 of  
39 the Penal Code that prohibits retaliation against hospital

1 employees who report suspected patient abuse by health  
2 facilities or community care facilities.

3 (h) For any employer, labor organization,  
4 employment agency, or person to discharge, expel, or  
5 otherwise discriminate against any person because the  
6 person has opposed any practices forbidden under this  
7 part or because the person has filed a complaint, testified,  
8 or assisted in any proceeding under this part.

9 (i) For any person to aid, abet, incite, compel, or  
10 coerce the doing of any of the acts forbidden under this  
11 part, or to attempt to do so.

12 (j) (1) For an employer, labor organization,  
13 employment agency, apprenticeship training program or  
14 any training program leading to employment, or any  
15 other person, because of race, religious creed, color,  
16 national origin, ancestry, physical disability, mental  
17 disability, medical condition, marital status, sex, age, or  
18 sexual orientation, to harass an employee, an applicant, or  
19 a person providing services pursuant to a contract.  
20 Harassment of an employee, an applicant, or a person  
21 providing services pursuant to a contract by an employee  
22 other than an agent or supervisor shall be unlawful if the  
23 entity, or its agents or supervisors, knows or should have  
24 known of this conduct and fails to take immediate and  
25 appropriate corrective action. An entity shall take all  
26 reasonable steps to prevent harassment from occurring.  
27 Loss of tangible job benefits shall not be necessary in  
28 order to establish harassment.

29 (2) The provisions of this subdivision are declaratory  
30 of existing law, except for the new duties imposed on  
31 employers with regard to harassment.

32 (3) (A) For purposes of this subdivision only,  
33 “employer” means any person regularly employing one  
34 or more persons or regularly receiving the services of one  
35 or more persons providing services pursuant to a  
36 contract, or any person acting as an agent of an employer,  
37 directly or indirectly, the state, or any political or civil  
38 subdivision of the state, and cities. The definition of  
39 “employer” in subdivision (d) of Section 12926 applies to  
40 all provisions of this section other than this subdivision.

1 (B) Notwithstanding subparagraph (A), for purposes  
2 of this subdivision, “employer” does not include a  
3 religious association or corporation not organized for  
4 private profit.

5 (C) For purposes of this subdivision, “harassment”  
6 because of sex includes sexual harassment, gender  
7 harassment, and harassment based on pregnancy,  
8 childbirth, or related medical conditions.

9 (4) For purposes of this subdivision, “a person  
10 providing services pursuant to a contract” means a  
11 person who meets all of the following criteria:

12 (A) The person has the right to control the  
13 performance of the contract for services and discretion as  
14 to the manner of performance.

15 (B) The person is customarily engaged in an  
16 independently established business.

17 (C) The person has control over the time and place the  
18 work is performed, supplies the tools and instruments  
19 used in the work, and performs work that requires a  
20 particular skill not ordinarily used in the course of the  
21 employer’s work.

22 (k) For an employer, labor organization, employment  
23 agency, apprenticeship training program, or any training  
24 program leading to employment, to fail to take all  
25 reasonable steps necessary to prevent discrimination and  
26 harassment from occurring.

27 (l) For an employer or other entity covered by this  
28 part to refuse to hire or employ a person or to refuse to  
29 select a person for a training program leading to  
30 employment or to bar or to discharge a person from  
31 employment or from a training program leading to  
32 employment, or to discriminate against a person in  
33 compensation or in terms, conditions, or privileges of  
34 employment because of a conflict between the person’s  
35 religious belief or observance and any employment  
36 requirement, unless the employer or other entity  
37 covered by this part demonstrates that it has explored any  
38 available reasonable alternative means of  
39 accommodating the religious belief or observance,  
40 including the possibilities of excusing the person from

1 those duties that conflict with his or her religious belief or  
2 observance or permitting those duties to be performed at  
3 another time or by another person, but is unable to  
4 reasonably accommodate the religious belief or  
5 observance without undue hardship on the conduct of the  
6 business of the employer or other entity covered by this  
7 part. Religious belief or observance, as used in this  
8 section, includes, but is not limited to, observance of a  
9 Sabbath or other religious holy day or days, and  
10 reasonable time necessary for travel prior and subsequent  
11 to a religious observance.

12 (m) For an employer or other entity covered by this  
13 part to fail to make reasonable accommodation for the  
14 known physical or mental disability of an applicant or  
15 employee. Nothing in this subdivision or in paragraph (1)  
16 or (2) of subdivision (a) shall be construed to require an  
17 accommodation that is demonstrated by the employer or  
18 other covered entity to produce undue hardship to its  
19 operation.

20 (n) For an employer or other entity covered by this  
21 part to fail to engage in a timely, good faith, interactive  
22 process with the employee or applicant to determine  
23 effective reasonable accommodations, if any, in response  
24 to a request for reasonable accommodation by an  
25 employee or applicant with a known physical or mental  
26 disability or known medical condition.

27 (o) For an employer or other entity covered by this  
28 part, to subject, directly or indirectly, any employee,  
29 applicant, or other person to a test for the presence of a  
30 genetic characteristic.

31 SEC. 7. Section 12955.3 of the Government Code is  
32 amended to read:

33 12955.3. For purposes of this part, “disability”  
34 includes, but is not limited to, any physical or mental  
35 disability as defined in Section 12926.

36 SEC. 8. Section 19231 of the Government Code is  
37 amended to read:

38 19231. ~~(a) As used in this article, the following~~  
39 ~~definitions apply:~~

1 ~~(1) “Individual~~ “*individual*” with a disability” means  
2 any individual who has a physical or mental disability as  
3 defined in Section 12926.

4 ~~(2) “Reasonable accommodation” means both of the~~  
5 ~~following:~~

6 ~~(A) Making facilities used by employees readily~~  
7 ~~accessible to and usable by disabled persons.~~

8 ~~(B) Job restructuring, part-time or modified work~~  
9 ~~schedules, reassignment to a vacant position, acquisition~~  
10 ~~or modification of equipment or devices, appropriate~~  
11 ~~adjustment or modification or examinations, training~~  
12 ~~materials or policies, provision of qualified readers or~~  
13 ~~interpreters, and other similar accommodations.~~

14 ~~(b) Undue hardship on the operation of a~~  
15 ~~department’s program shall be judged on all of the~~  
16 ~~following:~~

17 ~~(1) The overall size of the department’s program with~~  
18 ~~respect to the number of employees, the number and~~  
19 ~~type of facilities, and the size of the department’s budget.~~

20 ~~(2) The type of departmental operation, including~~  
21 ~~composition and structure of the department workforce.~~

22 ~~(3) The nature and cost of the accommodation~~  
23 ~~needed.~~

